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JUN 29 2009

OFFICE OF PETITIONS

In re Application of
Stephan Reith
Application No. 10/594,956
Filed: September 29, 2006
Attorney Docket No. BE-189PCT

DECISION ON PETITION

This is a decision on the petition, filed April 13, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to reply to the non-final Office action mailed September 18, 2008, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on March 27, 2009.

Petitioner asserts that the Office action dated September 18, 2008 was not received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. a copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Telephone inquiries concerning this decision should be directed to Newton Edwards at (571) 272-6052 or in his absence to the undersigned at (571) 272-7099.

This application is being referred to the Technology Center technical support staff of Art Unit 3724 for re-mailing the Office action of September 18, 2008. The period for reply will run from the mailing date of the Office action.



David Bucci
Petitions Examiner
Office of Petitions